# STATE OF MICHIGAN

# COURT OF APPEALS

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HI-LO HEIGHTS LAKEFRONT PROPERTY OWNERS ASSOCIATION, INC.,

Plaintiff-Appellant,

v

COLUMBIA TOWNSHIP, WANDA L. BLAIR, ROBERT W. BLUNT, JAY DUBENDORFER, HELEN HAWK, JAMES L. NEITLING, DONALD NESTOR, JILL E. ODONAHOE, MICHAEL ODONAHOE, JACKIE LEE PLUMMER, RYAN SCHRADER, VIVIAN ZWICK, and RICHARD BLAIR,

Defendants,

and

JACKSON COUNTY ROAD COMMISSION, DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES AND DNR, CHRISTINE M. BELCHER, DAVID BELCHER, KATHERINE BURR, SHELLIE D. CHEETHAM, SCOTT A. CHEETHAM, SANDRA M. COLE, JACQUELYN DALY, NORMA L. FRANTZ, PHILLIP J. FRANTZ, MICHAEL HEATH, ROY M. HOWARD, WALTER D. SHUBERG, JR., WILLIAM J. REITZ, JR., SHIRLEY L. KISTKA, ROBERT J. KISTKA, NANETTE LONG, JOHN P. LONG, GRETCHEN MARSHALL, VICTOR MARSHALL, DAWN NESTOR, LEHR G. NEVEL, ROBERT NEVEL, Deceased, HELEN NEVEL, JACK L. PLUMMER, MARGARET PLUMMER, DEBORAH REITZ, PATRICIA J. RICHARDSON, RUDOLPH ROCHESTER, BERNICE ROCHESTER, JEAN SHUBERG, HOLLY M. SMITH, DONALD E. SMITH, Deceased, ROBERT SNYDER, JOAN S. SNYDER, Deceased, JERRY L. SPENCER,

UNPUBLISHED
January 23, 2007

No. 260848
Jackson Circuit Court
LC No. 01-002466-CH

CHARLOTTE K. SPENCER, PAMELA STANSELL, a/k/a, PAMELA STANSELL-KENNEDY, SANDRA J. THOMPSON, TIMOTHY THOMPSON, RONALD WHIPPLE, CATHY WHIPPLE, WILLIAM J. WHITE, ALICE J. WHITE, LARRY WHITING, RAYMOND WILLIAMS, and ELIZABETH WILLIAMS,

Defendants-Appellees.

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Before: Sawyer, P.J., and Wilder and Servitto, JJ.

PER CURIAM.

Plaintiff appeals from a judgment entered in favor defendants following a one-day bench trial on plaintiff's claim for declaratory relief. We reverse and remand.

This case arises from a dispute between lot owners in the Hi-Lo Heights Subdivision regarding the parties' rights to use a park separating the subdivision from the shores of Clark Lake and the parties' rights to use avenues extending through the subdivision. Plaintiff is a nonprofit corporation whose members include certain lot owners whose property is closest to the shores of Clark Lake and immediately adjacent to the park ("front-lot owners"). Defendants include lot owners whose property is not adjacent to the park or the lake ("back-lot owners").

In July 1924, Chauncey and Jessma York platted a subdivision known as Hi-Lo Heights along the north shore of Clark Lake in Jackson County. The original plat laid out 147 lots organized into five blocks. The blocks are separated by six avenues that run perpendicular to Clark Lake and terminate at a park separating Hi-Lo Heights from the north shore of the lake. The dedication indicates that the "Boulevard Avenues as shown on said plat are hereby dedicated to the use of the public." The lots fronting Clark Lake are also separated from the lake by the same park. The park, which is not encompassed by the original plat, runs along the lake.

Between July 1924 and October 1927, the Yorks deeded a portion of the lots in Hi-Lo Heights. In October 1927, the Yorks executed a quitclaim deed that dedicated the disputed park to the owners of the several lots in Hi-Lo Heights subdivision. The deed provided as follows:

> This deed is given for the purpose of dedicating the said lands for the use of the parties of the second part [the owners of the several lots in Hi-Lo Heights Subdivision] hereto, their heirs and assigns, as a park and to provide access on foot only to the parties of the second part, their heirs and assigns, to the shore line of Clark Lake, and for no other purpose.

In subsequent years, docks have been erected seasonally along the park by both the front lot owners and the back lot owners. The front lot owners have erected docks in front of their property and the back lot owners have erected docks directly in line with the road endings. Boats are moored on these docks seasonally. Trial testimony indicated that the docks have been

erected on the park each year for the past 25 to 30 years and that moorings have increased in recent years.

The current dispute arises from plaintiff's attempt to limit the back lot owners' use of the park. After a bench trial, the trial court found that the back lot owners had a right use the park for picnicking, swimming, fishing, sunbathing, and for the use of docking facilities in a direction immediately in front of any of the several avenues depicted in the plat of Hi-Lo Heights.

The trial court's opinion states in relevant part:

> The Court is satisfied from a fair and complete reading of the Quit-Claim Deed, that Mr. and Mrs. York intended that all of the lot owners of the Hi-Lo Subdivision would have access to Clark Lake . . . The Court is satisfied and finds that the wording and intent is clear from the document, and that all owners of the Hi-Lo Heights lots is [sic, are] to have access to the land running along Clark Lake for use as a park and for access to the lake; access on foot is to be used rather than vehicles and that the access is only to be in the owners of the lots and not in the general public which is why the avenues that run to the park end at the beginning of the park and do not run to the lake's edge. The Court finds . . . the Quit-claim establishes an easement for all the lot owners in the strip of land running along the lake. As such, the riparian rights of the lake font owners remain with them subject to the use of the easement by all the lot owners. The owners of non lake front property have the right to use the strip of land along Clark Lake in a manner consistent with that of a park and to gain access to Clark Lake. Use of the park would include such activities as picnicking, swimming, fishing, sunbathing and all the general and usual uses made of a park. The Defendants would have access to the park by means of the several avenues set forth in the plat which lead to the park area. The Defendants would have access to the lake for use of the lake in the usual means including the erecting of docks in a line leading from the avenue access and used in such a manner as to not unreasonably interfere with the Plaintiffs['] use and enjoyment of their property. The Court is satisfied and finds that while access to the lake is with the Defendants, and includes the erection of docks as set forth above, the docks and other supplies and equipment are not to be left on the park.

The court issued a final judgment stating in relevant part:

> 1. Lots 14, 15, 16 and 17, Block 3; Lots 14, 15, 16, and 17, Block 4; and Lots 14, 15, 16, and 17 Block 5 of Hi-Lo Heights are riparian,[1] subject to the use of the easement described in Paragraph 2 below;

[1] Land which includes or abuts a river is defined as riparian while land which includes or abuts a lake is defined as littoral. *Dyball v Lennox,* 260 Mich App 698, 705 n 2; 680 NW2d 522 (2004). Although the disputed strip of land is technically littoral, we will use the term "riparian," which
(continued…)

2. All lot owners of the Hi-Lo Heights Subdivision have a right to use the park area running along Clark Lake in the usual manner in which persons might use a park, including the use of docking facilities in a direction immediately in front of any of the several avenues depicted in the plat of Hi-Lo Heights. Use of the park includes activities such as picnicking, swimming, fishing, sunbathing, and all of the general and usual uses made of a park;

3. No permanent obstruction of any manner may be maintained on the park area or on any of the roads within Hi-Lo Heights Subdivision;

4. No docking materials may be left on the park area when not in the water, nor may boats or watercrafts of any manner be left on the park area or on the roadways overnight or on a semi or permanent basis;

5. Seasonal boat mooring by nonriparian lot owners within the plat of Hi-Lo Heights is allowed at the aforereferenced docking area throughout the boating season, but once removed at the end of the season, said boats must not be left on the parkway . . . .

On appeal, plaintiff argues that the trial court erred when it granted the back lot owners the right to picnic and sunbathe in the park, as well as having a right to moor boats. While we agree that the trial court erred, we do not agree with plaintiff's assessment of that error. Specifically, we believe that the trial court made a fundamental error is ascribing the front lot owners as "riparian" and the back lot owners as "non-riparian" and assigning the rights to usage of the park area and waters off the park area based upon riparian versus non-riparian rights. Rather, all of the property owners are non-riparian owners and all have identical rights to use of the park area and the waters off the park area.

As originally platted, none of the lots are riparian. That is, all of the lots stop short of the water, including the lots the trial court deemed to be riparian. Rather, it is the park area which is riparian. It is the only portion of Hi-Lo Heights which encompasses Clark Lake. Therefore, the only riparian owner is the owner of the park land. See *Little v Kin*, 249 Mich App 502, 508; 644 NW2d 375 (2002), aff'd 468 Mich 699; 664 NW2d 749 (2003) (riparian land is land which includes part of or is bounded by a natural water course). Depending upon how the October 1927 deed is read, the owner of the park land is either the Yorks (or their successors in title) or the Hi-Lo Heights lot owners as a group. That is, the deed could reasonably be read as merely deeding an easement for use as a park to the owners of Hi-Lo Heights, with the Yorks retaining title. It could also reasonably be read as deeding the ownership of the park in fee to the lot owners as a group, the language relating to the purpose as merely being descriptive of the reason for the deed.

Neither of these interpretations of the deed supports the trial court's decision. If the 1927 deed merely granted an easement, then title (and the riparian rights) to the park land is retained by the Yorks or their successors in interest, and all of the Hi-Lo Heights property owners have

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is frequently used to describe both land that abuts a river and land that abuts a lake. *Id*.

the same rights to use of the park and the lake, consistent with the easement. Similarly, if the deed is construed as granting title in fee to the Hi-Lo Heights property owners, then all of the lot owners are collectively owners of the park land and owners of the riparian rights that go with that ownership. But again, those rights are the same for all the property owners of Hi-Lo Heights.

In short, the rights enjoyed by the property owners in Hi-Lo Heights is dependent on whether the 1927 deed granted title or merely an easement. But whatever those rights are, they are the same for all of the property owners. Because the trial court's conclusion in paragraph one of the judgment quoted above was wrong, it necessarily follows that the remainder of the judgment is incorrect as well because it treats the landowners differently depending on which lot is involved.

We recognize that the trial court's opinion describes the 1927 deed as granting an easement. But it also describes the front-lot owners as being lake-front owners and having riparian rights. As discussed above, those two conclusions are inconsistent. We do not necessarily believe that the trial court's finding that the 1927 deed constituted a grant of an easement was clear error, *Little, supra* at 507. But that conclusion is so intertwined with the clearly erroneous conclusion that the front-lot owners are riparian owners, we cannot say that the determination of the 1927 deed as granting an easement (rather than title in fee) can stand on its own. While our review of rulings in equitable matters is de novo, *id.*, we believe it more prudent to return the case to the trial court to reconsider the matter in light of our conclusion that none of the property owners have any individual riparian rights different from the group as a whole.

Accordingly, on remand the trial court is free, if necessary to resolve this dispute, to make a new determination regarding whether the 1927 deed constitutes a grant of an easement or title in fee. But the trial court's primary obligation on remand is to determine the rights of the land owners of Hi-Lo Heights, recognizing that those rights are the same for all of the land owners, regardless of their status as back-lot owners or front-lot owners.

Reversed and remanded for further proceedings consistent with this opinion. No costs, no party having prevailed in full. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Kurtis T. Wilder
/s/ Deborah A. Servitto